(2001) 08 NCDRC CK 0065

In the National Consumer Disputes Redressal Commission

OM PRAKASH SINGH — APPELLANT

Vs

BRANCH MANAGER, UNITED INDIA INSURANCE COMPANY — RESPONDENT

Date of Decision : 14-08-2001

Acts Referred:

Citation : 2002 3 CPJ 287

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna J.

Final Decision : Appeal allowed

Judgement

1. THIS is an appeal against the judgment and order dated 25.6.1992 passed by District Forum, Gorakhpur in Complaint Case No. 94/92.

2. BRIEFLY stated the facts of the case are that the complainant Om Prakash and his brothers Uma Shankar and Rama Shankar were the owners of a jeep which was insured with United India Insurance Company. This jeep met with an accident on 8.6.1989 during the validity of the insurance policy. The complainant submitted a claim to the Insurance Company but Insurance Company has not settled the claim inspite of survey having been got done. The complainant got the jeep repaired and spent a sum of Rs. 31,222.40. Insurance Company has not paid this amount hence complaint has been filed for recovery of this amount alongwith Rs. 5,000/- for compensation. The opposite party in its written version has alleged that driving licence of the driver was not given to the Insurance Company by the complainant hence the claim could not be settled.

It is further alleged that besides complainant his brother is also owner of the jeep hence the complainant alone cannot file the complaint.

3. THE parties led their evidence before the learned District Forum. THE learned District Forum after considering the facts of the case came to the conclusion that as driving licence was not produced the complaint is not maintainable. THErefore, the District Forum dismissed the complaint. Aggrieved against this judgment and order the complainant has come in appeal challenging the correctness of the order passed by District Forum.

4. WE have heard the Counsels for the parties. The only question in the present case is whether for non-submission of the Driving Licence of the driver of jeep which met with accident, the claim of complainant can be refused or not in view of the facts of this case. There is no evidence on record to show as to when the complainant was asked to furnish the driving licence. According to learned Counsel for Insurance Company all the other papers except driving licence were furnished to the Insurance Company. The complainant had lodged F.I.R. with police soon after the accident. The accident took place on 8.6.1989 at 4.45 a.m. and report was lodged on 8.6.1989 at 5.30 a.m. at Police Station, Transport Chauraha, Gorakhpur. A perusal of the FIR goes to show that jeep was detained and from the possession of the deceased driver of the jeep namely Rama Shankar son of Bindeshwari Singh, resident of Govindpur, P.S. Anandnagar, Gorakhpur, the driving licence was recovered on which above particulars were mentioned. When the copy of this report was given to the Insurance Company, it was the duty of the Insurance Company to have contacted the police for verification of the driving licence. The complainant could not have given the driving licence on account of the fact that it was in possession of the police. From the evidence on record it is clear that the Surveyor has not done his duty by contacting the police and inspecting the driving licence which was found with the deceased driver of the jeep. It is not disputed at this stage that Rama Shankar was not driving the jeep and he did not hold the valid driving licence. In view of the material record we find that there was deficiency of service on the part of Insurance Company. So far as the quantum is concerned the report of Surveyor has not been filed. The compalainant has given evidence that he has spent Rs. 31,222.40 on the repairs. We do not find any reason to disbelieve the evidence of complainant. The learned Counsel for the Insurance Company has alleged that the complainant has also filed another complaint before the District Forum, being Complaint Case No. 203/92 which has been decided by the District Forum on 17.10.1992. and Rs. 7,143/- has been awarded to the complainant on account of his share. We are not concerned with the happening of later date. We have come to the definite finding that complainant is entitled to claim of Rs. 31,222.40/-. However if any amount has been paid to the complainant the same can be deducted from the amount which is to be paid to the complainant.

5. IT has further been argued by the Counsel of Insurance Company that when the second complaint has also decreed the first complaint has become infractuous. We are not impressed with the same.

6. NOW the question of rate of interest arises. Learned Counsel for the Insurance Company has argued that the interest should be fixed at the rate of 12% per annum. In support of his argument he has placed reliance on the case of United Insurance Company Limited v. MKJ Corporation., III (1996) CPJ 8 (SC)=1996-1999, Consumer 4781 (SC) in which it was held that the rate of interest in the case of Insurance Company should be 12% per annum. However, the learned Counsel for the complainant has argued that the interest should be awarded at the rate of 18% per annum in view of the decision of the Hon''ble

Supreme Court in the case of United India Insurance Company Limited v. Fancy Traders, VII (2000) SLT 365=JT 2000 (10) S.C. 327. The Hon''ble Supreme Court in this case held that the interest at the rate of 18% per annum is justifiable. The order of the Hon''ble Supreme Court is short and is being reproduced below : ORDER "(1) Leave is granted. (2) Heard learned Counsels for the parties. (3) The net loss caused to the respondent due to fire was assessed at Rs. 4,72,146/- but the applicant paid only a sum of Rs. 2,75,146/- to the bank of the respondent. The balance amount together with interest at the rate of 18% was ordered to be paid to the respondent by the State Commission. (4) Having regard to the facts and circumstances of the case, the Hight Court also did not interfere with the rate of interest awarded by the State Commission. We find no justification for our interference in the matter under Article 136 of the Constitution. (5) The appeal is accordingly dismissed. There shall be no order as to the costs." In a recent case, National Insurance Company v. Jeet Ram Sheo Kumar, III (2000) CPJ 5 (SC)=VI (2000) SLT 624=2001 CTJ 1 SC, the Hon''ble Apex Court had also considered the quantum of interest which should be awarded in the case of Insurance Company. In that case before the Apex Court, it was held that the repudiation of the claim by the Insurance Company was wholly mala fide. It was held that all the risks were covered by the insurance policy. The ship which was carrying the goods was lost on the high seas. Before the Hon''ble Supreme Court it was contended that the Commission was not justified in awarding interest at the rate of 18% per annum to the respondent. The Hon''ble Supreme Court repelled the contention of the Insurance Company about the rate of interest in the following words : "So far as the question of quantum of interest is concerned, we see no infirmity in the order passed by the Commission except that the order of the Commission requires a little alteration so that the date 6.12.1987 is altered to 12.8.1987 in consonance with the judgment of the Commission itself."

The learned Counsel for the Insurance Company has placed reliance on the case of Smt. Kaushnuma Begum & Ors. v. The New India Assurance Company Limited & Ors., I (2001) SLT 300=I (2001) ACC 151=JT 2001 (1) SC 375. According to learned Counsel in this case the interest at the rate of 9% per annum has been directed to be paid. We have gone through this case. It has been held that how we have to fix up the rate of interest. Section 171 of the Motor Vehicles Act empowers the Tribunal to direct that ''in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in this behalf''. Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of the Reserve Bank of India, the interest rate has been lowered. The national banks are now granting interest at the rate of 9% on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants. The amount of Rs. 50,000/- paid by the Insurance Company under Section 140 shall be deducted from the principal amount as on the date of its payment, and interest would be recalculated on the balance amount of the principal sum from such date.

7. THUS we find that the Hon''ble Courts has considered the provisions of Section 171 of the Motor Vehicles Act. The provisions of the Consumer Protection Act were not considered in that case and the interest at the rate of 9% per annum was allowed which is being granted now on fixed deposits by the nationalised banks. Learned Counsel for the complainant has argued that the Hon''ble Supreme Court has in all previous cases under Consumer Protection Act has confirmed the rate of interest at 18% per annum because this also represents the amount of damages which has to be given. According to learned Counsel the damages are granted in the form of interest and damages consist of many components. Learned Counsel for the complainant has a point in this argument. Under the Consumer Protection Act no rate of interest has been provided. The Hon''ble Supreme Court has granted interest under the provisions of Section 34 of the Civil Procedure Code. The Hon''ble Supreme Court in the case of Sovintorg (India) Limited v.State Bank of India, II (1999) CPJ 4 (SC)=VI (1999) SLT 545=(1999) 6 SCC 406, has held that the interest can be awarded as compensation or damage because it is based on equity, justice and good conscience. Reliance has been placed by the learned Counsel for the complainant on the case of Jeet Ram Sheo Kumar v. National Insurance Company, III (2001) CPJ 5 (SC)=I (2001) SLT 660=2001 (I) Supreme 333. In that case the interest was awarded by the National Commission at 18% per annum on the principal amount. Thereafter an appeal was brought to the Supreme Court against the judgment of the National Commission. The Apex Court directed for deposit of principal amount alongwith 12% per annum interest. Therefore, the Hon''ble Supreme Court passed the final order confirming the award of principal amount and interest as reported in 2001 CTJ 1. It was held in 2001 (1) Supreme 333 (supra), that liability to pay interest at 18% cease not seize merely because principal amount alongwith 12% interest was deposited pursuant to interim order. The respondent was therefore held liable to pay interest at the rate of 18% per annum. THUS the Apex Court has held that 18% interest is to be paid in cases under Consumer Protection Act. That was a case against the Insurance Company which went to the Hon''ble Supreme Court against the judgment of the National Commission. THUS we find that in cases arising under the Consumer Protection Act, the Hon''ble Supreme Court has consistently taken a view that interest at the rate of 18% per annum has to be paid on the compensation amount. This rate of interest has been allowed by the Hon''ble Supreme Court keeping in view the facts that the claims which are pending before the Insurance Companies within a reasonable time and the claims are repudiated on flimsy grounds. The complainant is harassed by the Insurance Company and he has to suffer mental torture and has to run to the office of the Insurance Company and has to wait for getting the insured amount after entering into litigation. All these factors are considered while granting compensation in the form of interest in such cases. Thus in view of the majority of decisions of the Hon''ble Supreme Court, it is now clear that the interest at the rate of 18% per annum is to be paid

by the Insurance Company when it is found that the deficiency is on behalf of the Insurance Company. The appeal is liable to be allowed. ORDER The appeal is allowed. The complaint is decreed. The judgment and order passed by District Forum are set aside. The opposite party shall pay a sum of Rs. 31,222.40 to the complainant after deducting the amount, if any, already paid to the complainant, alongwith interest @ 18% p.a. on the above amount w.e.f. 10.10.1989 till the date of payment. The complainant will also get cost of Rs. 2,000/-. Let compliance of the order be made within period of two months. Let copy as per rules be made available to the parties. Appeal allowed.

